

In the Matter of License No. 38678
Issued to: FRANK H. FINNEY

BY ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

441

FRANK H. FINNEY

By virtue of the authority reposed in me as Commandant of the United States Coast Guard, and because of the unique problem presented by this case, I have ex proprio motu reviewed the decision rendered by the Examiner on 16 September, 1949.

On 16 September, 1949, a hearing pursuant to Title 46 United States Code 239 was conducted by a Coast Guard Examiner at Coeur d'Alene, Idaho. Frank H. Finney was charged with "negligence" supported by two specifications alleging in substance that while serving as operator on board the American Motor Boat WEEWANA, under authority of the license above described, on or about 31 July, 1949, he operated said Motor Boat without having proper equipment on board (life preservers, fire extinguishers, bell and ventilators for the engine compartment) and without having on board the Certificate of Award of Number.

At the hearing, the person charged was given a full explanation of the nature of the proceedings and he was represented by counsel of his own choice. Finney entered a plea of "not guilty" to the charge and each of the specifications.

The Investigating Officer introduced in evidence the testimony of three witnesses before resting his case. The person charged testified under oath in his own behalf and also offered in evidence the testimony of John F. Finney, the owner of the motor boat WEEWANA.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and counsel for the person charged, the Examiner found the charge of "negligence" and both specifications "proved". He then entered an order dated 16 September, 1949, suspending License No. 38678, and all other licenses, certificates and documents held by Frank H. Finney, for a period of eight months on fourteen months' probation.

On 11 August, 1949, prior to the issuance of the Examiner's order, John F. Finney, as owner of the WEEWANA, was sent a notice of violation based on the same allegations set forth in the two specifications herein. The total possible penalties which could be assessed for these violations under Title 46 U.S.C. 526o and 46 U.S.C. 288, were stated to be \$610 distributed as follows:

1. \$200 for violation of 46 U.S.C. 526e in that the life preservers on board the

- WEEWANA were not the type prescribed by regulation;
2. \$100 for violation of 46 U.S.C. 526d since there was no bell aboard the vessel;
 3. \$100 for violation of 46 U.S.C. 526j in that the engine compartment was not properly ventilated;
 4. \$200 for violation of 46 U.S.C. 526g because there was only one instead of two fire extinguishers on board; and
 5. \$10 for violation of 46 U.S.C. 288 since the vessel's Certificate of Award of Number was not on board. (This was later stated to be a violation of 46 U.S.C. 526t instead of section 288).

John F. Finney replied to this notice of violation by letter dated 27 August, 1949, in which he stated that he understood the cushion type Kapok life preservers would be approved by the Coast Guard until six months after the war was declared over; that a bell had never been required because the boat was not operated in fog; that the engine compartment ventilation had been previously approved by the Coast Guard; that the boat had previously been approved with one fire extinguisher; that the certificate was kept ashore to preserve it against damage; and that these discrepancies had all been remedied so that the WEEWANA conforms in all respects to these Coast Guard regulations. Taking into consideration these explanations, the assessment of penalties was reduced to \$300 by the Commander of the Thirteenth Coast Guard District. The penalties finally assessed for violation of 46 U.S.C. 526e and 46 U.S.C. 526g were \$200 and \$100, respectively, and the other penalties were entirely remitted. This action was taken on 4 October, 1949, when the assessment notice was sent to John F. Finney.

Finney filed an appeal to the Commandant, dated 28 October, 1949, in which he set forth substantially the same explanations as in his letter of 27 August, 1949, plus an argument questioning the jurisdiction of the Coast Guard based on the claim that Lake Coeur d'Alene is not a "navigable" body of water. Upon review of this appeal, it was ordered on 9 December, 1949, that each fine be reduced to \$25, a total of \$50, since the lack of one fire extinguisher is not believed to have been a wilful omission and because there was no shortage of lifesaving equipment except that the life preservers on board were not the approved cork vest type. This assessment was paid by John F. Finney in January of 1950.

Since the action on the assessment was taken subsequent to the order of the probationary suspension imposed by the Examiner as a result of the hearing in the case of Frank H. Finney, the appeal taken in connection with the assessment of the navigation fines shall be considered as applicable to the suspension proceedings.

For the purpose of this review, the findings and conclusions of the Examiner are hereby adopted except as otherwise specified. Since the fines imposed with respect to the bell, ventilation and certificate were remitted and the other two penalties mitigated due to the circumstances involved, it is my opinion that this action should be reflected in these proceedings by modifying the Examiner's order so that the two results will be reasonably consistent.

A discussion of the jurisdictional rights of federal authorities over navigation on Lake Coeur d'Alene can be found in my decision in the case of John F. Finney. (Headquarters No. 440). It was there decided, on the authority of Spokane Mill Co. v. Post (1892), 50 Fed. 429, United States v. Appalachian Electric Power Co. (1940), 311 U.S. 377, that the waters of Lake Coeur d'Alene are "navigable" within the definition of federal jurisdiction.

In order to accomplish the desired end, the order of the Examiner dated 16 September, 1949, is modified to read as follows:

ORDER

"License No. 38678, and all other certificates, licenses and documents held by Frank H. Finney, are hereby suspended for a period of one (1) month. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239) is proved against you for acts committed within six (6) months of 16 September 1949. If this probation is violated, the order for which probation was granted shall become effective with respect to all certificates of service, licenses, or merchant mariner's documents here involved, and also any certificates of service, licenses or merchant Mariner's documents acquired by you during the period of probation, at such time as designated by any Examiner finding the violation, and may be added to or form a part of any additional order which is entered by such Examiner." As so modified, said Order is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 23rd day of January, 1951.